IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV. APPLICATION NO.324 OF 2005

Nanda Ashok Katkar .. Applicant

Versus

Ramesh Shivadas Katkar & Ors. .. Respondents

Mr.A.G.Toraskar for applicant

Mr.S.A.Rajeshirke for respondent Nos. 1 to 4

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th December 2006.

P.C.

. Applicant original complainant is aggrieved by an order of acquittal in a criminal

case instituted by her alleging offences punishable under section 323 of I.P.C.

2. Learned J.M.F.C. has in the order of acquittal recorded that the complainant examined herself. She did not depose in accordance with her version recorded by police. She has deposed that her mother and son took her to the police station wherefrrom she was referred to Sasoon Hospital. In Hospital her complaint was recorded. At the time of incident her son, Paresh, daughter, Nita, mother, Bhagirathi and one Kalawati Gaikwad, neighbour were present. Assault took place, according to her because the accused threatened her about withdrawal of civil suit. She did not accede to their demands and that is how they assaulted her.

3. However, learned Judge has noted that the complainant deposed that she had not filed any compensation petition after death of her husband.

However, she later on admitted that Motor Accidents Claim No.886 of 2000 is filed. She denied that it is withdrawn. However, copy of withdrawal petition is filed on record and that is how, learned Judge has observed that P.W.1 original complainant is not stating the truth. She has stated that she had filed a Suit No.1755 of 2001 against her own relations and accused are formal party thereto. Her evidence is not at all corroborated by other witnesses including her own son. Documentary evidence produced on record with regard to proceedings instituted by her demonstrates that she is not stating the truth.

4. It is in the above circumstances, that the learned Judge has observed that the testimony of the other witnesses and their version has to be seen. Accordingly, the neighbours who were examined and the so called relations have been disbelieved. The medical evidence is also disbelieved rightly by observing that the

patient's case history of injury as being caused by iron rule, whereas P.W.1 original complainant states that she was assaulted by hammer. These two are distinct weapons and injuries caused by them are also distinct. The injury certificate Exh.26 was given to patient on 16th June 2001 and it was produced by the patient in the court. It is clear from the observations of the learned Judge that the injury certificate is also produced by the original complainant during her deposition. The entire case, therefore, becomes doubtful, according to learned Judge.

5. In the facts and circumstances of the present case, the learned Judge has rightly observed that the prosecution failed to prove the intention on the part of accused to cause hurt to complainant and mere proof of injury will not warrant their conviction under section 323, 324 read with 34 I.P.C. Prosecution has not led any evidence to prove intent of the accused as well.

6. In the above circumstances, the conclusion reached that the prosecution has failed to bring home the guilt does not require any interference.

7. It is after going through all depositions and despite straneous efforts by Mr.Toraskar that I am not inclined to entertain this revision application. I am not in agreement with Mr.Toraskar that the impugned order suffers from serious legal infirmities and requires interference in revisional jurisdiction. He is unable to point out as to how the same suffers from errors apparent on the face of record and/or can be termed as perverse. Revision application is, therefore, summarily dismissed.

(S.C.Dharmadhikari, J)